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Arthur S. Beardsley

University of Washington School of Law

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DESIDERATA PERTAINING TO SELECTED LEGAL MATERIALS OF WASHINGTON

ARTHUR S. BEARDSLEY

Of particular importance to a law librarian, but not without interest to the lawyer and student alike, are the bibliographical data and desiderata which pertain to the legal publications of their immediate locale. Through such desiderata, facts, which frequently may be quite unknown or which may have been overlooked, are brought to light and preserved for future interpretative research. Oftentimes, the circumstances surrounding these publications may be unknown or may not have attracted attention because of their common character and daily use. Oftentimes, also, the user may have been too close to them to perceive any peculiarities of imprint, pagination or form.

The documentary history of Washington is measured by the half century of statehood which has just passed, to which must be added the territorial period of the thirty-five years preceding. Although this is relatively but a brief space of time, it has been sufficient to produce many documents of legal significance, all of which are circumscribed by numerous salient facts not infrequently overlooked, if actually they are known. From among these desiderata the following notes are offered for present recollection and future remembrance.

I. Constitutional Convention Proceedings.

Aside from the newspaper reports of the two constituent assemblies called for the organization of the state of Washington, and contrary to popular belief, no printed report of the proceedings of either convention exists.

The first Constitutional Convention for Washington Territory was called to meet on June 1, 1878. It was a small but representative body of sixteen men. The Convention was held in Walla Walla and was in session during forty working days, but the constitution proposed through their efforts was rejected by Congress. No stenographic report of its proceedings was permitted, but the Convention granted authority to the *Walla Walla Union* to reprint the daily business. Many years later these proceedings were collected from the newspaper reports by the late Professor Edmond S. Meany and the late Dean John T. Condon of the University of Washington and, with the text of the proposed constitution, were published under their joint editorship in

the *Washington Historical Quarterly*.¹ Later the several installments were compiled into book form.

The Convention which drafted the constitution upon which statehood was later predicated assembled eleven years later in Olympia on July 4, 1889 and adjourned on August 22 following. Consisting of seventy-five delegates, it was a much larger body than the Constitutional Convention of 1878, but neither the quality of its membership nor the product of its labors was in any manner superior.

Unfortunately the Act of Congress which authorized the holding of this second constituent assembly² made no provision for a stenographic report of its proceedings. It was the wish of the delegates, however, that the minutes of the Convention should be preserved, and accordingly the Convention engaged the two best reporters in the territory—Charles B. Eaton and Alonzo C. Bowman—to record the proceedings. Although no funds were available with which to pay them for their services, the Convention agreed to recommend to the first state legislature that they be reimbursed for their work. This the Convention did; and the late Professor Edmond S. Meany and Judge Charles E. Claypool, as members of the House and the Senate respectively in the second and third legislatures, personally introduced such bills and vigorously but vainly urged their passage. The legislature refused either to reimburse the reporters or to provide for the publication of the proceedings. No particular objection was offered to these bills other than the usual "economy" cry. Judge Claypool has told the writer that the legislators really intended to pay these claims, but just kept putting them off. It was indeed a calamity that the legislature was so apathetic. Twelve years later the reporters stated that they would not then undertake to transcribe the notes and, accordingly, they were destroyed.³ A few years prior to his death, Professor Meany endeavored to reconstruct the history of this Convention from the recollection of the few surviving members, and from the newspaper reports extant. Unfortunately, at this writing the manuscript remains unpublished.

Early in its sessions, the Convention adopted the *Rules of the Constitutional Convention*, a pamphlet of 9 pages, now a very scarce document.

II. Constitutions.

The Constitution for the proposed state of Washington, drafted in 1878, as pointed out above, is printed in the *Washington Historical Quarterly*, and, likewise, in the "reprint" thereof as compiled by Professor Meany and Dean Condon. In addition to the text of the pro-

¹ Vols. 9-10, 1918-1919.

² *Pacific Northwest Quarterly*, 25 Stat. 676, Ch. 180.

³ Edmond S. Meany, *History of the State of Washington*, revised edition, (New York, 1924), 284.

posed Constitution of 1878, available in the above form, some copies of the text thereof are extant in pamphlet form. These are all that remain out of an edition of 5,000 copies authorized by the Convention to be printed for public use.

The first publication of the document which was to become the Constitution of the state was issued by the Constitutional Convention in 1889, after its labors had been completed. It was printed by the public printer of the Territory and consisted of 28 pages. Another edition of the Constitution in 74 pages, also in pamphlet form "with marginal notes and a full index," was prepared by Andrew Woods, an attorney of Seattle. It was printed in the same year by the William H. Hughes Company of Seattle. Because of the notes and index, this edition of the Constitution became a useful document and was used generally by the bar. Copies of both of these documents are now scarce and have been quoted on the second-hand market at five dollars each.

The publication of the Constitution in pamphlet form by the secretaries of state has been a common practice, and numerous editions are noted in the *Reference List of Public Documents, 1854-1918*, 51 pages, as published by the state librarian in 1920. The following editions may be noted, although there are other editions bearing more recent imprints: The edition of 1891 contains side notes and an index; the edition of 1901 contains marginal titles of sections and amendments adopted in the years 1894, 1896, 1900; the edition of 1905 contains side notes and an index; the edition of 1911 contains the two insert amendments of 1910; the editions of 1914 and 1915 are fully and excellently annotated, but, unfortunately, later editions omit these annotations; the editions of 1939 and 1941 are changed from 8mo to 12mo in size.

The editions of the Constitution for the years 1939, 1941 and 1943 contain as an appendix the added feature of notes on the Constitution by this writer. These are entitled, *The Sources of the Washington Constitution as Found in the Constitutions of the Several States*, xxxvii pages. Aside from the brief notes contained in Judge R. A. Ballinger's *Annotated Codes of Washington* following the sections of the Constitution, this is the first attempt to trace the sources of the provisions of the Constitution of Washington and to measure the influence which the constitutions of other states of the Union have had upon it. Particular attention is directed therein to the proposed Constitution of 1878, and to the draft of a model constitution prepared by William Lair Hill^{3a} at the request of the Portland, *Oregonian*, and printed only in the issue of that paper for July 3, 1889. The influence which these proposed constitutions had upon the document finally drafted by the

^{3a} William Lair Hill was a former editor of the *Oregonian*; a lawyer and judge in Oregon; author of codes for Oregon and Washington; and later a prominent lawyer in Seattle.

Constitutional Convention of 1889, as ratified by the people on October 1 of that year, is substantial, but difficult accurately to measure.

III. Legislative Bills.

It is indeed, regrettable that so few of the legislative bills introduced into the territorial legislature are now extant. The reason is unknown; but the practice of printing them seems to have been initiated with the first territorial session in 1854. The only ones known to exist are partial files of the bills for the legislative sessions of 1863-64 and 1864-65 which are in the University of Washington Law Library and those for the sessions of 1865-66, and 1866-67 which are in the general library of the University of Washington. Very scattered and incomplete files are in the state library at Olympia. It is particularly unfortunate that the bills for the legislative session immediately preceding statehood are unavailable, although beginning with the first session of statehood (1889-90), complete files of these legislative bills are extant in several of the large libraries of the state.

IV. Legislative Journals.

The printing of the territorial legislative journals began with the first session in 1854 and continued regularly throughout the territorial period, except that neither house printed its journal for the 10th biennial session for 1885-86 due to the lack of funds. Furthermore, due to the fact that in certain years the federal appropriation for printing had been exhausted prior to the completion of the printing of the journals of both houses, the journal of only one house was printed. Thus, no House Journals were printed for the following sessions:

4th biennial	1873
7th biennial	1879
10th biennial	1885-86

and no Council (called Senate after statehood) Journals were printed for the sessions:

5th biennial	1875
8th biennial	1881
10th biennial	1885-86

From the above data, it will be noticed that in the 4th biennial session (1873) only the Council Journal was printed, while in the 5th biennial session (1875) only the House Journal was printed. For the 6th session of 1877, both journals were printed; but for the 7th session (1879), only the Council Journal was printed; while in the 8th session (1881), only the House Journal was printed.

The above gaps in the files of the territorial journals have been the cause of much confusion, but since the manuscripts of these unprinted journals are extant in the files of the Secretary of State, it has been possible, when necessary, to refer to them there. However, through the courtesy of Mrs. Belle Reeves, the incumbent Secretary of State, these manuscript records have now been transcribed. The un-

dertaking was a cooperative project sponsored by the University of Washington Law Library, the University of Washington Library, and the Washington State Library. Only a few typewritten copies were made, and no copies will be available for distribution to other than the contributing libraries; but the enterprise will now make these unprinted journals available for research in typewritten form.

It should be pointed out, that no indexes have been supplied to any of the territorial legislative journals, which is a handicap to their study and use. This is in contrast with the legislative journals of statehood, all of which are supplied with useful indexes.

V. Legislative Manuals.

Although not possessing a great amount of legal material, legislative manuals and handbooks are, nevertheless, useful for supplying the roster of public and judicial officials and statistical data relating to the courts. Frequently these manuals include biographical sketches and even photographs, thereby aiding in the preservation of the legal history of the state. Such manuals, also, generally include the legislative rules, the constitution, and similar information.

In the state of Washington, legislative manuals have been in use since the first session of the state legislature (1889), but they were not published by the state until the 5th session in 1897. The earlier manuals were the product of private enterprise, and were sometimes pictorial in form and intended to be purely commercial ventures. As aids to the members of the legislature these pictorial manuals were of little value, because they lacked the statistical data desired by the legislators; but even as pictorial manuals they have served a good cause, for they have preserved the photographic history of the courts and legislature, including those of many lawyer members. This value has been proven in recent months in connection with the efforts of the University of Washington Law Library to collect photographs of the lawyers and judges of Washington. Certain photographs have been found in these manuals which had not been obtainable either from family, friends or from historical compilations.

From the files of these manuals the following data have been compiled:

1889-1893—1st-3rd sessions. *Legislative Handbook and Manual*, compiled by Clarence M. Barton.

1895—4th session. See pictorial manual, below.

1897—5th session. *Manual of the Washington Legislature*.

1899—6th session. See below.

1901-1943—7th-28th sessions. *Manuals of the Washington Legislature*.

Among the pictorial manuals are the following:

1893—3rd session. *Souvenir of Washington's Third Legislature*, compiled by Will L. Visscher and W. H. McEwen.

- 1895-96—4th session. *Souvenir Manual*, compiled by Will A. Steel of Seattle and Albert Searl of Tacoma.
- 1899—6th session. *Legislative Manual and Political Directory*, compiled by Central News Company, Tacoma, Washington.
- 1902-03—8th session. *Ryan's Legislative Manual*, compiled by John H. Ryan of Tacoma, Washington.
- 1907—10th session. *Cayton's Campaign Compendium*, 1908, compiled by Horace Roscoe Cayton, publisher of the *Seattle Republican*.
- 1911—12th session. *Ryan's Washington Legislative Manual*, compiled by John H. Ryan and Ella E. Ryan, Tacoma, Washington.
- 1913—*The 13th Session of the Washington State Legislature and State Officials*, compiled by Alfred T. Renfro, Legislative Historian, (Seattle) 1913.

VI. *Legislature Debates and Committee Reports.*

Contrary to popular belief, the Washington legislative debates are not preserved. It is the popular but erroneous opinion that these debates are included in the proceedings of the legislature as recorded in the journals thereof, but such is not the case. The legislative debates are not recorded; although the action taken upon the legislative bills is to be found in the journals. Except as these debates may be found in the newspaper reports of the legislative proceedings, they are not preserved.

During the territorial period, reports of legislative committees were quite frequently recorded in the journals. Preserved in this manner they have been of great value to historians and students of the state government alike; but this has not always been true of the legislative committee reports during statehood. Numerous committee reports are to be found in the journals, but for the most part these are the usual stereotyped report that the bills "do" or "do not" pass. Most of the factual content of these reports is omitted and accordingly the committee findings and its reasons are soon destroyed or lost.

In recent years, frequent suggestions have been voiced by lawyers and legislators that at least the reports of the judiciary committees of the legislature ought to be reported in full in the legislative journals. This is especially important where statutory changes are being made; hence, if the reason for the changes in the laws were incorporated into these committee reports, they would thereby be preserved. Some precedent for such a practice can be found in the work of the committees on statutory revision of the legislature in the 1925, 1927 and 1929 sessions. A brief survey of the work of this committee is herein included.

On February 11, 1925, the legislature adopted Senate Joint Resolution No. 6 which recited that, the statute books of the state contained many laws which were "manifestly obsolete," and other statutes which

by "reason of faulty drafting and numerous amendments" were "verbose, complicated, conflicting, and contradictory." It authorized the appointment of a committee to select a competent attorney, experienced and expert in the drafting of statutes, whose duty it would be to examine as much of the statute law as could be done in a thorough and painstaking manner between the adjournment of the legislature and the reconvening of the extraordinary session which the Governor had promised to call. His report was to be presented to the judiciary committees of the House and Senate at the beginning of the extraordinary session.⁴

Acting upon authority granted by the above resolution, the committee appointed Charles S. Gleason of Seattle, to draw the necessary bills for the amendment or repeal of the faulty statutes. Mr. Gleason was well qualified to counsel and aid the legislators in the preparation of such bills, because he had acted as a special assistant attorney-general during the years from 1913-1931. When the extraordinary session convened on November 9, 1925, work on this project had progressed far enough to permit the introduction of 24 bills in the House and 22 bills in the Senate, of which total 42 later became laws.

This, however, was just a beginning; and much more time was needed to complete the work assigned by the committee. For this reason, Senate Joint Resolution No. 5 was passed providing for the continuation of the committee, and directing the revisor to continue his work in the interim between the adjournment of the extraordinary session of 1925 and the convening of the 20th regular session of the legislature in 1927.⁵

When the legislature convened in January of 1927, many bills were all ready for consideration by the Joint Committee on the Revision of Laws. A special resolution authorized the introduction of 100 bills in the House of Representatives and the remainder of such bills in the Senate. This special resolution also provided that said bills be printed, with notes and reasons for their recommendation.⁶ Under the authority of this resolution, the full number of authorized bills was introduced in the House, and 83 bills were introduced in the Senate. Of the 183 bills introduced, 97 in the House and 76 in the Senate became laws. An examination of the bills introduced by the committee in this session will show that appended at the end of each bill are notes giving the committee's reasons for the repeal or amendment of the law in question. Not only inconsistent statutes, but also statutes and parts of statutes which had been declared unconstitutional or ineffective by the Supreme Court, were included. As an illustration of the type of information contained in these notes, the following example is cited:

⁴ Laws of Washington, 1925, pages 606-607.

⁵ Laws of Washington, Ex. 1925, pages 610-611.

HOUSE BILL 52

An Act—Repealing Chapter CII (102) of the Laws of 1901, relating to appeals.

Section I. That Chapter CII (102) of the Laws of 1901, pages 213-214 is hereby repealed.

Note: We recommend the specific repeal of Chapter 102 of the Laws of 1901 for the reason that it was held unconstitutional by the supreme court in 28 Wash. 317 and 30 Wash. 222.

Checked with the statutes and/or decision by Senators Palmer and Hastings, and Representatives Falknor and Soule.

The above example is a very brief one, but will illustrate the idea. Other notes were of greater length, sometimes comprising several pages.

Before the 1927 session drew to a close, it became obvious that the committee could not hope to complete its work at that session. In order to be sure that the work would be carried on, House Joint Resolution No. 4 was passed on March 4th. It provided for the continuation of the committee throughout the ensuing biennium, and gave to it the power to introduce in the 1929 session the necessary repealing and revising bills and to order that they be printed with "explanatory notes giving the reasons of the committee" for the specific action recommended.⁷ Thus the work of the committee was carried forward into the 1929 session of the legislature, where 44 bills were introduced in the House and 40 bills in the Senate. Each of these bills, like the 1927 committee bills, had appended thereto explanatory notes pertaining to that bill.

As a result of the committee's action in the legislative sessions of 1925, 1927 and 1929, approximately 1,000 obsolete or inconsistent laws were changed or wiped from the statute books. But the work was never really completed. It is estimated that approximately 400 or 500 additional laws would have been revised or repealed had not Governor Roland Hartley vetoed the 1929 appropriation of \$2,000 for continuing the work. The Governor's disapproval put an end to the committee's work, and with the death of the revisor, Charles Gleason, in 1932, further effort in this direction was dropped.

The notes of this Committee on Statutory Revision are of great importance and value, but the committee was only a special and temporary one and ceased to exist when the appropriation for its work was cut off. The work of the judiciary committees of the two houses is similar in nature. Their reports, if annotated by the reasons and findings of the committees, could serve much the same purpose and would be of a permanent character. Such a reform probably could be

⁶ Senate Journal 1927, page 8; House Journal 1927, page 47. This resolution is not printed in the 1927 session laws.

⁷ Laws of Washington, 1927, pages 937-939.

accomplished by a simple joint rule of both houses of the legislature. As an illustration of the information which such a note could supply, the following example^{7a} might be cited:

An Act . . . HOUSE BILL ----
Note. See Laws of Minnesota 1928, page 43, Chapter 16.
See also, Laws of Wisconsin 1931, page 62, Chapter
140.

VII. *Legislative Record*

The present *Legislative Record* had its inception in a resolution introduced by Senator Harold Preston in the legislative session of 1899.⁸ By the terms of this resolution a "competent" person was to be employed "to attach to all bills data and annotations covering the contents of the measures introduced and their relations to and bearing upon previous legislation in this and other States." As contemplated by Senator Preston's resolution, Frank Pierce was appointed to this position at a salary of five dollars per day.

Commenting on this appointment, the *Portland Oregonian* under date of January 28 had this to say:

"At a recent session of the Washington state senate, Mr. Pierce was appointed to fill a position heretofore unknown in connection with the enactment of laws in that state. He compares new laws with old ones, and notes his findings in reports thereon to the senate."

The reports furnished to the legislature in compliance with this appointment were titled *Indexes and Annotations to Senate and House Bills*. In form and arrangement, both for the listing of the bills and for the subject index therein included, these reports paved the way for development of the present *Legislative Record*. In fact, the latter follows the pattern of the Pierce index in every detail, except for the captions used and for the annotations, which are now omitted.

The scope of the annotations included by Mr. Pierce are worthy of particular consideration. The following example is offered as illustration of the quality of the service rendered by him, and as evidence of the value of such service to the state.

(Senate) No. 38 Bill to compel steam railroads to fence
1899) their rights-of-way . . .
Railroads and Transportation (This is a
cross reference to the subject index).
Verbatim as H. B. 96.
Legislation of other states:
Iowa Code '97, Secs. 2054-55.
Montana Code, Vol. I, P. 968, Sec. 950,
et seq.
Ohio Rev. Stat. '90, Sec. 3324, *et seq.*

^{7a} These references are, of course, purely fictitious, and compiled for illustrative purposes only.

⁸ Senate Journal, 1899, page 88, January 19, 1899.

Supplement Howell's Stat. Mich., Sec.
3357, *et seq.*

Following the action of the Senate, the House by resolution also provided for assistance similar to that sought by the senate resolution, and again Frank Pierce was selected to do the work.⁹ Thus, he was employed by each house and his salary fixed at the wage of the members' pay in each house. Meeting Mr. Pierce a few days later, Senator Preston remarked, "I see you are drawing the salary of a member in each house. You are receiving \$10.00 per day, while I get but \$5.00. How do you do it?" To which Mr. Pierce is said to have replied, "Well, I'm probably worth it."

When the 1901 legislature convened, Mr. Pierce was again in attendance. Although he was not employed to prepare an index and record of the legislative bills, as he had done in the preceding session, he nevertheless prepared and printed, upon his own behalf and at his own expense, a record of the legislative action upon the bills introduced. This *Record* was made available to the legislators, who, notwithstanding the printing of an official record by the legislature, itself, found *Pierce's Record* a matter of great convenience.

In describing this private publication, Mr. Pierce remarked to the writer:

"I saw the cumbersome and inadequate way in which the state's *Legislative Record* was being handled, so I printed excerpts of the titles to the bills and prepared an index. I had it printed in a size to fit your hand, and so that it could be carried in the pocket. I cited the supreme court decisions, laws of other states, and other data helpful for the consideration of the bill. Each day's *Record* would be available the next morning in the form of an addendum. Every few days these addenda would be revised and indexed. In comparison with the state's *Legislative Record*, my reference to the titles was brief—only a line or two—whereas the state had to print the entire language of the titles; besides, my index was a copious one."

Probably because of the size employed, copies of this *Record* were easily lost, and, so far as is known, no copies are now extant.

Beginning with this legislative session of 1901, the present form of *Legislative Record* has had an uninterrupted existence.

VII. Session Laws.

No attempt will be made to review all desiderata pertaining to the session laws of Washington, but because of the interesting factual data which surround them, several of these deserve special mention.

The laws of the first session of the territorial legislature (488 + viii + xviii),¹⁰ which was the special session of February 28, 1854,

⁹ House Journal, 1899, page 602.

¹⁰ In Sabin's *Dictionary of Books Relating to America*, following number 101914, a note indicates that there are some copies of this imprint in which the date reads "February 27th, 1854," instead of February 28, 1854.

should have been printed in Olympia, but they were not printed there. As had happened in Oregon the year before, and which was again to occur in Oregon in 1855,¹¹ the laws were sent to New York for printing. No facilities were available in Olympia for printing and binding although at that time the little village of Olympia did possess a weekly newspaper.¹² So the public printer, J. W. Wiley—printer and probably her first lawyer—sent his partner, A. M. Berry, with the manuscript to New York to arrange for the printing there of the laws of this first session. Shortly after arriving at his home in Greenland, New Hampshire, Berry took ill of smallpox and died; hence, the laws were not ready for the next session of the legislature (the first regular session) when it convened in December of that year. This was a matter of great inconvenience to the legislators, courts, attorneys, and the people, none of whom were able to recall the laws enacted, or the codification effected at that first session. Not only were the laws of the February session unpublished in December, 1854, they were not so published and distributed during the two years which followed.¹³

By the time that the second legislative session (the first regular session) was over early in the year 1855, the public printer, J. W. Wiley, was in a position to print and bind the laws in Olympia. Thus the laws for the December session of 1854 were printed at home. Probably none of the early territorial laws were bound in board or sheep: all seem to have been "paper-backed" editions. Doubtless this factor contributed greatly to the loss and destruction of these volumes, which necessitated the frequent purchasing of copies by subsequent legislatures from private owners, and which now make them excessively scarce and sometimes quoted as high as one hundred dollars each.

The original edition of the laws of 1854-55 contains 6+5—75 pages with its index at the front of the book. In 1875, the then Secretary of the Territory, Attorney Henry G. Struve, reissued these laws in a reprint edition, and certified them to be a "true and correct copy," but printed them with a different typography. This difference in typography added a few additional pages to the volume. In its final form, this reprint contained 6 + 5 — 82 + (1) pages, but evidently at that time a supply of the index signatures existed, as the latter was not re-

Also in some copies, the spelling of word "Constitution" has been corrected; the rest of the imprint being the same as the first mentioned copy.

Some copies have been noted in which the first pages of the text and last pages of the index have been reset. Mr. I. L. McCloud of the Statute Law Book Company, Washington, D. C., states that evidently a number of copies were defective, and that these pages were reprinted to perfect such copies.

¹¹ Arthur S. Beardsley, "Code Making in Early Oregon," in *Pacific Northwest Quarterly* (Seattle, 1936) xxvii, 23.

¹² *Pioneer and Democrat*.

¹³ Charles H. Prosch, *Chronological History of Seattle*, mms. (n.p.n.d.) 49; also Hubert H. Bancroft, *Works* (History of Washington, Idaho and Montana), xxxi, 77.

printed. These original indexes were used in the reprint volume, and since the paginations of the two editions do not agree, references to these editions must necessarily vary.

According to Clarence B. Bagley, who served for some years as the territorial public printer, reprints were made by him of the second (1854-55) and sixth (1858) session laws of Washington Territory.^{13a} The reprint of the second regular session is the one referred to above as having been authorized by Henry G. Struve; but that of the sixth regular session if it actually was made is evidently a very scarce item, as no copy appears in the western law libraries. Another reprint of this session was made by a private printer, and only one copy of it is reported in the American Imprints Inventory No. 44, being *A Checklist of Washington Imprints, 1853-1876*. This copy is now in the University of Washington Law Library. This particular copy carries the name of "William K. Esling, printer." It is not known just what Mr. Esling's business was at this time nor the date of the imprint. In 1890, however, he was editor of the *Morning Olympian*.

During the first fourteen years of the territorial period, the legislature met annually. In 1869, the first biennial session assembled, and this has been the arrangement from that date. Since Congress provided the funds for legislative expenses, it was a common practice to frequently recodify the laws of the territory. Such codifications did little more than add the amendments,¹⁴ and the frequency with which this was done was justified only by political expediency. The job of public printing was something that politicians used as bait for their own political aggrandizement. Hence, no less than six separate codifications took place during the territorial years for which the federal government paid the bills.

Since the story of the *Code of 1881* has been fully considered elsewhere,¹⁵ it will be sufficient merely to refer here to the story. Considerable confusion has existed with reference to this publication, because it was designed to embrace and thereby take the place of the session laws of that year. The volume of the laws labeled with that year is generally regarded as the session laws of 1881; but for the most part it contains only the special and private laws of that session. Only a few of the general laws of this legislative session are included in it. While the legislature intended that no general laws should be included in that volume, a few were inadvertently included in it in the same manner that a few general laws were omitted from the *Code of 1881*, and which later necessitated the publication of a volume supplementary to that *Code*.¹⁶

^{13a} Clarence B. Bagley, *History of King County, Washington*, (Chicago-Seattle, 1929) i, 592.

¹⁴ Arthur S. Beardsley, "Compiling the Territorial Codes of Washington," in *Pacific Northwest Quarterly* (Seattle, 1937), xxviii.

¹⁵ *Idem*.

¹⁶ Bagley's *Supplement to Code of 1881*. (Olympia, 1884) 50 pages.

In recent months, a few cooperating libraries,¹⁷ through the medium of the Works Progress Administration, have made a verbatim transcription of these laws of 1881 from the enrolled bills on file in the office of the secretary of state, including both the general and the special laws, and covering both the regular and the extra sessions. Since but a few copies have been made, none will be available for exchange with other law libraries.

What was intended to be a reprint of the territorial laws for the years 1854 through 1881, was made by Frank Pierce in 1896. It was his first attempt at law publishing, and of it Mr. Pierce has said:

"Times were bad, and everybody sought every possible means to make some money. I didn't like to sit around doing nothing. My law business didn't provide me with a living, so I decided to follow the suggestions of a Seattle attorney—John G. Barnes—and get out an edition of the territorial laws. They were quite scarce, even at that time, and I thought I could make a profit by the venture. However, I never did; and, in fact, I lost money."

In further explanation of the above transaction, Mr. Pierce states that he conceived a plan of exchanging with the state law library sets of his "reprint" for session laws and supreme court reports. This would have enabled him to sell complete sets of the session laws to lawyers who might wish them. Such complete sets of the session laws would naturally include the "reprint" of the territorial laws for the years from 1854 to 1887, and the state session laws for the sessions thereafter. However, the laws for 1893 were then out of print; and since the supply of those for 1895 was low, they were specifically excluded from the scope of the plan, and those for 1897 inferentially included to make up for the shortage.

The plan would also have been helpful to the state law library by supplying it with sets of the "reprint" for purposes of exchange with libraries outside the state. But, as Mr. Pierce relates, he obtained but few copies of the session laws and not more than a dozen volumes of supreme court reports. The reason as given by the state law librarian for his failure to supply supreme court reports was, that the supply of surplus volumes was then insufficient. As the plan proved to be unprofitable, Mr. Pierce returned most of the session laws to the state and permitted the state law library to retain the copies of the "reprint."

Since the plan required legislative approval, a resolution was introduced to provide the necessary authority; and because the contents of this resolution are unique, certain excerpts are herein included. How-

¹⁷ University of Washington Law Library, King County Law Library and the State Law Library. While the project was initiated by the writer, the supervision of the project to a satisfactory completion is due to the indefatigable efforts of Hon. Mark Wight, librarian of the State Law Library.

ever the background of the legislative procedure should first be presented. Two resolutions were offered to cover the proposed plan. The first, House Joint Resolution No. 2, was introduced by Representative J. P. DeMattos, an attorney from Bellingham; but it precipitated much opposition, and was finally withdrawn from the Judiciary Committee and "laid on the table." It was never printed, and its contents are not fully known, but Mr. Pierce states that the subsequent resolution, which he drew and had substituted for it, was much the same. The second resolution was introduced as House Joint Resolution No. 23 by Representative D. R. Lusher, and was sent to the Committee on Libraries, which accorded it a more favorable consideration than the Judiciary Committee had given to the first resolution.

After its passage in the Senate, Governor Rogers signed it (it was the practice in that session to submit all resolutions for the executive signature). After he had signed the resolution, he became somewhat concerned over the scope of its contents and called a conference at which the Attorney General, Thomas Vance, and Frank Pierce were present. Both assured the Governor of the fair intent of the measure and finally succeeded in placating his fears.

This interesting resolution, which is so intimately associated with the history of the Pierce "reprint," is as follows:

"WHEREAS, The original publication of the Session Laws for the year 1888, and prior thereto, including the Code of 1881, are out of print and can rarely be obtained, and when obtainable cost from \$100 to \$150 per set; and

"WHEREAS, There is a new publication by the Tribune Printing Co., of the laws covering the said period, and it is desirable to obtain this publication for the use of the legislature committees; and

"WHEREAS, The publishers of said books are desirous of obtaining copies of the state's publication of the Session Laws published since 1888; and

"WHEREAS, The state has more than 6,000 volumes of Session Laws, and Supreme Court Reports it cannot dispose of: therefore, be it

"RESOLVED BY THE HOUSE, THE SENATE CONCURRING, That the state librarian be and he is hereby authorized to procure, by exchange and without the payment of money 15 copies of 5 volumes each, in all 75 volumes, at the exchange price of \$6 per volume, bound in manila. He shall give in exchange Session Laws and Supreme Court Reports at the full selling price thereof: PROVIDED, He shall not give in exchange any of the Laws of 1895.

"That publication of the laws of 1897 shall not be interfered with and that the printed sheets may be delivered: after the number which the present legislature shall order has been run the state printer shall run at the cost (with 10 per cent added) or paper and press work, and if desired the usual binding, such number as shall be desired and as the li-

brarian shall need to effect the exchange. If binding is had, additional books (Reprints) shall be given in exchange therefor . . ."¹⁸

The Pierce "reprint" of the territorial laws, the exact title of which is *Laws of Washington*, is not intended to be a complete reprint, although there is nothing on the title pages so to indicate. One fault of this set, and one which runs through all of Mr. Pierce's many publications, is a brevity of the prefaces, or a lack of them altogether. His reprint of the territorial session laws was no exception. The limited scope of the "reprint," and the arrangement of the material contained therein should have been mentioned in a preface to the set; but he included no such preface. It was, as he has advised the writer, his intention to omit all laws of a private or special nature and also those which were at the time of publication no longer in force; but this fact he does not make clear. Furthermore, it is difficult for the user to know that the compiler was endeavoring to bring together all laws of similar character. In addition, reference to the pagination of the original session laws would have been helpful in view of the use of a continuous pagination for each volume. Probably the fact that volume three bears the imprint date 1895, while the other volumes of the set are dated 1896, is typical of the many errors and inaccuracies to be found in the publication. The set consists of five volumes, of which volume five is the *Code of 1881*. As might be expected, the enterprise was an unprofitable venture; but notwithstanding its limited use, complete sets are now scarce; and, when obtainable, they command a high price.

Following the publication of his "reprint" of the territorial laws in 1896, Mr. Pierce undertook the publication of an index of the session laws from 1854-1897. It appeared in 1898, and contained 67 pages. The exact title of this publication reads, *Index (sic) Laws of Washington, Including all the General, Local and Private Laws, Memorials and Resolutions, also Miscellaneous Laws Affecting Land Titles*. The statutory citations contained in it are primarily directed to Mr. Pierce's "reprint" of the territorial laws; but in the case of later territorial or state laws, references are given directly to the dates of the laws indexed. A peculiar arrangement presents the latest citations first, and the remainder in reverse chronology—a feature seldom employed in indexing.

While the title page states that this *Index* is to be revised after each session of the legislature, this was never done. The *Index* is useful, however, in checking against the indexes of the Code of 1881 and the respective session laws upon which it is predicated.

In an effort to satisfy certain lawyers who had in their libraries the *Code of 1881* and who desired to bring it up to statehood, Mr.

¹⁸ *Laws of Washington*, 1897, page 454.

Pierce prepared a reprint of the session laws for the years 1883, 1885 and 1887. The laws for these years were not reprinted verbatim, but the volume compiled was taken from a portion of volume four of his "reprint" of the territorial laws described above. The volume in question, according to the title page, is entitled *Laws of Washington Including All the General Laws Enacted by the Legislature of the Territory of Washington at the Session of 1887-8, 1885-6, 1883 and is Compiled from the Original Rolls, Indexed, the Index including all local and private laws, with table of corresponding paging with Public Printer's copy*. The binder's title, however, reads *Laws of Washington, 1887-8, 1885-6, 1883*, with (3) + 4 — 546 pages. Like other Pierce compilations, it was published by the Tribune Printing Company. Its imprint date is 1900, four years after he had first published this material in the above mentioned volume four of the "reprint" of the territorial laws.

It is interesting to note that the arrangement of the laws in the *Laws of Washington, 1887-8, 1885-6, 1883* is in reverse chronological order, which is the same arrangement as in the volume four of the "reprint." All that he did to compile this volume was to take a number of copies of volume four of his "reprint," and bind up the first 546 pages, destroying the balance of the volumes. A new title page, and an index were added, and the binder's title changed. In this form, the *Laws of Washington, 1887-8, 1885-6, 1883* was offered to the Washington bar. Evidently but few copies were sold.

Somewhat analogous to Pierce's index of the laws from 1854-1897 is the *Complete Index to the Code of Washington and to the Session Laws Enacted by the Territorial Legislature*, 378 pages, Olympia, 1888. The binder's title, however, varies, with some copies reading *Index to Code and Laws of Washington, 1881-87*, and other copies reading *Index to Code and Laws of Washington Territory, 1853-88*. This Index, as the title states, covers in parallel columns all reference to the sections of the *Code of Washington*, or as it is more generally known, the *Code of 1881*, and to the laws enacted at the subsequent legislative sessions of 1883, 1885, and 1887. Thus, the Index, by whichever binder's title employed, covers all laws in force in the Territory up to the organization of statehood. It was published by authority and printed by the public printer.

The publication of this Index was provided for by general statute^{18a} and was to have been printed and bound as part of the Session Laws of 1885-86; and the territorial legislature, at the same time, directed that the printing of the *Index* "shall not be at the expense of the territory." However, the *Index* was not included with the session laws of 1885-6, probably because the federal government would not pay for the cost thereof, as it ordinarily did for the printing of the session

^{18a} Laws of Washington, 1885-86, page 171 (February 4, 1886).

laws and legislative journals.

In the session of 1887-88, the legislature by another general act^{18b} provided for the printing of this Index; but this time it was to be at the expense of the Territory and "in the same style and character, and arrangement of matter as the index to the laws of Wisconsin of 1887, . . ." In the publication which followed, the public printer followed the spirit of the statute of 1886, and, without statutory authority, bound a number of copies of the Index with the laws of the succeeding territorial session of 1887-88. It is interesting to note in this connection that there was no statutory authority for including in the above compilation an index of the laws of 1887-88. It should also be noted that the language used in the act of 1885-86 in describing which laws should be indexed, included also "all acts of a general and local nature left in operation after the compilation of the Code of 1881." Such description was probably broad enough to have covered the indexing of the laws published in *Bagley's Supplement to the Code of 1881*; but it appears that this was not done in the main index, but was carried out in a separate one.

In addition to the copies of the Index which were bound in with the territorial session laws of 1887-88, the public printer supplied some copies of the Index bound separate from the session laws with the two types of labels referred to above; other copies also were issued with paper covers in the same unbound form as the territorial session laws were often printed.

The laws passed by the first session of the state legislature are the *Session Laws of 1889-90*. It is an interesting volume because it follows an arrangement quite different from that employed in the publication of the laws of subsequent sessions. The plan used divided the laws into twenty-one chapters of related matters, whereas, modern practice gives to each law a chapter number, consecutive as to the order filed with the Secretary of State. Each of the laws included in this volume is also given a descriptive subject caption which is a feature employed only in the laws of 1887-88 and 1889-90.

Contemporary with the publication of the official edition of these laws, an unofficial edition lacking the resolutions and memorials contained in the official edition was issued by the State Printing and Publishing Company, of Olympia. The pagination of this volume totals 690, while that of the official edition is 824. The contents of the unofficial edition, however, are captioned as in the original edition; but instead of being arranged into chapters, they are arranged for the most part by the dates approved by the Governor in the same manner as presently employed in the current volumes of the laws.

When Frank M. Lamborn was appointed public printer, he undertook to do the state's printing at his shop in Tacoma. Hence, the

^{18b} *loc. cit.* 1887-88, page 181 (February 2, 1888).

Session Laws for 1903 bear the Tacoma imprint. This was the only official volume of the state session laws which has been printed elsewhere than at the capital. The reason given by Mr. Lamborn for doing the work in Tacoma was, of course, that of expediency. He had a modern and well equipped printing plant in Tacoma, only a few miles from Olympia; and it seemed logical to him that the work should be done there.

Public printing has always been a matter of political patronage in the state of Washington and bids well so to continue. Since the state did not own the printing plant, the incoming public printer had to rent or buy such equipment as he needed in order to do the state's printing and binding. Thus the practice grew up for the incoming public printer to purchase the printing plant and equipment of his predecessor. This was the practice employed up to the beginning of the administration of Roland Hartley, as governor, in 1925.

After his inauguration, Governor Hartley arranged with his newly appointed public printer—Jay Thomas, that the state should within the term of his office tenure become the owner of the printing plant and that the state should thereafter operate it. Hence, that, which had been a source of profit to the public printer personally, should in due time become a source of profit to the state.

The plan, as worked out, did not include the state as a contracting party, although the contract as made designated the state as a third party beneficiary. The public printer and certain trustees acting upon their own behalf, agreed to borrow about \$30,000 with which to purchase the printing plant of Frank M. Lamborn. The receipts from the work done for the state at statutory prices were to be deposited in a trust fund after payment of expenses of operation, including the salary of the public printer, which was not to exceed \$500 per month, and the repayment of the loan.

By the time of the expiration of Governor Hartley's first term, the plant had been paid for and a profit of about \$8,600 had been accumulated which was turned over to the state.¹⁹ Governor Hartley was reelected for a second term, and in 1933, the trustees turned over to the state a bill of sale for the entire printing plant,²⁰ with an additional cash profit of \$14,242 which was increased by subsequent litigation in the further sum of \$10,960.²¹

While intended for temporary use, the *Laws of Washington, 1905* published by Frank Pierce,²² was nevertheless a complete reprint of these laws. The chapters follow exactly those of the official edition, but, due to the small type used, the pagination is different. The former contains 196 pages, while the official edition contains 450 pages. The

¹⁹ Laws of Washington 1929, Ch. 91, p. 176.

²⁰ Laws of Washington 1933, Ch. 97, p. 409.

²¹ 176 Wash. 544.

²² Pierce, himself, was the Tribune Printing Company.

volume is usable, if the laws are cited in terms of the chapters and sections; but it is not a satisfactory substitute for the official edition when the laws are cited by references to the pages of the latter edition.

For the year 1907, two editions of the session laws are in common use. Few persons know of the existence of these two editions, and therefore, they are used interchangeably. The official edition printed by the state bears the pagination xii + 871, while the *Laws of Washington, 1907*, compiled by Frank Pierce and printed by the Tribune Printing Company of Seattle bears the pagination vii + 877. The text and pagination of these two editions are, of course, identical, so that they can be cited interchangeably. The difference between them lies in the omission in the Pierce edition of the "List of Acts" and the "Vetoed Bills" found in the state edition from pages 785-818. This leaves a gap in the pagination of the Pierce edition between the pages above mentioned, but it²³ contains a few more pages than the official edition, due to a more extended and detailed index.

Both of the above editions bear the statement "Published by Authority." It is easily understood how the state edition was published by authority, but there was no statutory authority for the publication of the laws by Mr. Pierce. Even the public character of the contents and their inapplicability for copyright could hardly have afforded him the right to use the phrase "Published by Authority;" in fact, the publication of the laws of 1907 by Mr. Pierce actually was in violation of law.²⁴

Some criticism had arisen to the unofficial publication of the laws of the state, such as had been made by Pierce in 1905, and this resulted in the enactment of a statute in 1907 prohibiting such a publication within one year after the close of the session. The act carried an emergency clause which made it effective upon its approval by the Governor. In speaking of this violation of the law, Mr. Pierce states that he, of course, "knew of the statute, but wanted to see what, if anything, the state would do about it." According to Mr. Pierce, no objection was forthcoming, but it ended his plan to publish biennially parallel editions of the session laws.

IX. Sources of State Session Laws.

Subject to a minor exception, no simple method exists by which the sources of Washington session laws can be determined. The question is frequently asked, "Where did we get this law?" As a general rule, the answer must be that we do not know. However, there are

²³ This is an appropriate place to record how Mr. Pierce chose the name of "Tribune Printing Company" for his publications. At about this time, (1907) he contemplated publishing a newspaper and had chosen the name "Tribune" for it. The printing was to be done by the "Tribune Printing Company." However, nothing came from the plan, although Mr. Pierce retained the name for use in the imprints on his publications.

²⁴ Laws of Washington 1907, Ch. 136, Sec. 6.

several checks which might be made, although but slim hope of success can be offered. Let them be enumerated as follows:

1. Is the law in question a recent one? If so, ascertain who introduced the bill into the legislature. If living, he may be able to recall from what source the law was obtained. Few of the bills which related to major legislation are entirely original even with their sponsors. They have been copied in part from other states, or developed by organized societies or groups interested in certain legislative reform.

If the bill was introduced by a legislative committee, perhaps its chairman or some member thereof may be able to offer some suggestion as to its source.

2. If the law is an old one, there is some hope of success. However, if the law is in the intermediate period of statehood for which no legislator survives, little hope can be offered of ascertaining its source.

As pointed out above, however, some hope of ascertaining the source of early laws is possible. The lawyer may recall that under the provisions of the Organic Act, the laws of Oregon Territory were to be in full force and effect in Washington Territory; and also, that at the first territorial session of the Washington legislature a code based largely upon the Oregon laws was prepared by the legislative code commission consisting of Chief Justice Edward Lander, Associate Justice Victor Monroe, and former justice of the Oregon territorial Supreme Court, William Strong. These code provisions are indicated by the reference to the "Laws of 1854" found in the legislative history of the acts, as the code referred to above was prepared and adopted during the first legislative session.

3. Was the law in force in 1896? If the answer is "yes," the inquirer should be able to locate it through the index to Ballinger's *Annotated Codes and Statutes of Washington*, and, if successful, it is likely the source of the Washington law will be found to rest in similar or identical legislation in such states as Indiana, Iowa, California, Oregon, or New York. Judge Ballinger has compared the Washington statutes with those of many states, and had noted the similarities in his notes on the legislative history of the Washington statutes. At the same time, he added interpretative decisions from the courts of those states in conformance to the rule that where a state adopts the statute law of another state, it likewise adopts the interpretations of that law. Hence, the Ballinger code is annotated with decisions from other jurisdictions.

4. In like manner, but not to such a satisfactory extent, the McLaughlin *Code of Washington, 1896* (McLaughlin, Remsberg and Atkinson), includes some parallel references to similar statutes in other states.

Legislators who are lawyers could do much to improve this situation and to preserve the sources of current major legislation by the adoption

of a joint rule of the legislature requiring the bill draftsman to add at the end of his bill, as suggested elsewhere herein, a note setting out the sources from which it had been derived. The process is simple and not at all in proportion to the benefits which would accrue to interested lawyers and students of state government if such information were available.

X. Codes and Statutory Compilations.

No comment upon these various codifications, both territorial and state, official and unofficial, is included herein for the reason that these publications previously have been described by the writer in articles appearing in the *Pacific Northwest Quarterly*.²⁵ It should be noted here that the 1941 session of the legislature provided for a Code Commission to plan a recompilation of all laws of the state and to adopt a uniform system of numbering for all future codes.²⁶ This commission under the provisions of the statute consists of the librarian of the State Law Library, the law librarian of the University of Washington, and the secretary of the Judicial Council.

XI. Supreme Court Reports—Territory

During the territorial period from 1853-1889, three volumes of *Washington Territory Reports* were published. Two of these were under the editorship of Attorney John B. Allen, and the third under the editorship of Attorney Henry G. Struve. A fourth volume of the territorial reports should have been published to have included the decisions which had been handed down in the January and March terms 1889; but instead of being published as volume 4 of the *Washington Territory Reports*, they were included at the end of volume 1 (pages 487-615) of the *Washington State Reports*. In fact, one edition (1891, by Bancroft-Whitney) of the above volume 1 of the state reports carries this information on the lower label. The responsibility for the publication of these omitted decisions was assumed by the state supreme court reporter, Eugene G. Kreider, who stated²⁷ that he took them from the *Pacific Reporter* with the consent of the West Publishing Company.

No less than four editions of volume 1 of the *Washington Territory Reports* have been published. These editions are as follows:

- 1 Wash. Terr., (1854-1864) 256 pages, 1864, published by Territory.
- 1 Wash. Terr., (1854-1879) 616 pages, 1879, published by Territory.

²⁵ Arthur S. Beardsley, "Compiling the Territorial Codes of Washington," and "Codes and Code Makers of Washington," *Pacific Northwest Quarterly*, (Seattle, 1937) xxviii, 3-54 and (Seattle, 1939) xxx, 3-50 respectively.

²⁶ Laws of Washington 1941, Ch. 149, p. 418.

²⁷ Footnote, 1 Wash. Terr. 487.

- 1 Wash. Terr., new series, (1854-1879) 624 pages, 1891, published by Bancroft-Whitney.
- 1 Wash. Terr., new series, (1854-1879) reprint, 616 pages, 1906, published by Bancroft-Whitney.

The first two of these editions were published by the Territory and the two latter editions by the Bancroft-Whitney Company of San Francisco following the admission of the territory as a state. The 1864 edition was published by the Territory but bears no reporter's name; while the 1879 edition published also by the Territory but printed by the Bancroft-Whitney Company, was copyrighted by John B. Allen, then the reporter of the court. Thus the two editions published by the Territory are originals, the 1879 edition covering a longer period of territorial history; but the Bancroft-Whitney editions are reprints. This fact is further evidenced by the term "new series" appearing on the title pages of the latter editions, and is particularly admitted for the 1906 edition by the further addition of the word "reprint" on its title page.

Referring again to the volume 1 of the *Washington Territorial Reports* published in 1864, while the title page of this volume does not indicate the name of the reporter, the editorial work was done by Elwood Evans, then the Secretary of the Territory, in pursuance of a resolution passed by legislative assembly of 1863-64 (page 188) providing that, whereas,

"The decisions of the Supreme Court of the Territory, on many of the most important laws, are inaccessible to the bench, the bar and the people, by reason of their never having been published; and whereas, There is a necessity for the publication of the same, to secure the proper enforcement of the law; . . .," the Secretary of the Territory is authorized to have the work done and to add "a proper syllabus of the cases prepared," and to have the same published as an appendix to the Journal of the Council.

It is interesting to record that Evans, himself, in pursuance of this authority, did the work, and was compensated by the following legislative assembly (1864-65, page 146) in the sum of seven hundred dollars. Only a few copies of these Opinions were appended to the Council Journal of 1863-64, as directed by the above Resolution; and today but three copies of the Journal in this form are known.

Volume 2 of the *Washington Territory Reports* covers the period from the July term 1880 through the July term 1885. It was copyrighted by John B. Allen in 1884, and was again copyrighted by him in 1886. No publication took place under the 1884 copyright as this was not then required under the copyright law then in force.

Due to a change in the law, no term of the supreme court was held in 1886. Hence, there are no decisions for that year, and a gap in the chronology of the decisions of the court is apparent. A similar situation is to be found in volume 1 of the *Washington Territory*

Reports where, as a search will disclose, the legislature also changed the time of the meeting of the supreme court and thereby dispensed with the 1863 term of court. It is of further interest to note that no term of court was held in 1856. There the reason is not clear, but was due to a lack of business or more probably to the Indian War then in progress.

Volume 3 of the *Washington Territory Reports* was compiled by the then reporter, Henry G. Struve, and was copyrighted by the Bancroft-Whitney Company in 1888, although publication did not take place until 1889. The period covered by this volume was from the January term of the supreme court 1887 to and including the special term of July, 1888, leaving, as pointed out above, the January and March terms 1889 to be included either in an added volume 4 of the territorial reports or in the first volume of the state reports, if and when the latter should be published at a subsequent date. The above volume includes 669 pages, but covered a period of only one and one half year's time. It illustrates how rapidly litigation was then increasing when compared with volume 2 of the territorial reports, which consists of 535 pages, and which covered six years of litigation, and with volume 1 which consisted of 616 or 624 pages, depending upon which edition is cited, and which covered twenty-six years of time.

It is interesting to note further that two of the cases²⁸ included in this volume 3 of the territorial reports are dated 1882, and had been inadvertently omitted from volume 2.

The several editions of volumes 2 and 3 of the *Washington Territory Reports* are indicated by the following data:

- Volume 2 original edition, 1886, 535 pages.
- 2 reprint, (Bancroft-Whitney) 1906, 535 pages.
- 3 original edition, 1889, 669 pages.
- 3 reprint, (Bancroft-Whitney) 1906, 669 pages.

In the publication of these volumes, Bancroft-Whitney acted under a contract with the court reporters in the case of the original editions of the volumes 2 and 3; and in pursuance of their contract with the public printer in the case of their 1906 reprint editions.

XII. Supreme Court Reports—State.

The publication of the *Washington Reports* began in 1891, and the official volumes as published by the state, bear the imprint, "O. C. White, Public Printer." At that time the court reporter was Attorney Eugene G. Kreider, who continued to serve in that capacity for 14 years, and until he was succeeded by Attorney Arthur Remington in 1903, who, in turn, held the same position for 36 years.

Paralleling the publication of the supreme court reports by the state, the Bancroft-Whitney Company in the same year also began the publication of a series of these reports, which thereby gave two

²⁸ Pages 232 and 235 respectively.

original editions of these volumes. Such publication was permissible, because under the law then in effect²⁹ these reports were not to be the subject of copyright, although such features as notes, syllabi, and indexes could be copyrighted either by the reporter or by private compiler. This, both the state and the Bancroft-Whitney Company later did.

The statutes likewise required, and such has been the rule from that date, that the official printing of the reports should be done within the state. This restriction did not apply to a competitive publication but was directed only to the publication of the reports by the state. For ten years the public printer of the state published these supreme court reports under an arrangement with the reporter. Thus, volumes 1-9 *Washington Reports* bear an official imprint by the public printer. In the meantime, as pointed out above, the Bancroft-Whitney Company had paralleled the publication of these nine volumes with an edition of their own and which bears their imprint. Both editions are therefore original; and both are identical throughout, but the Bancroft-Whitney edition probably should be classified as unofficial.

Pursuant to the authority granted him by statute, the reporter entered into a contract with the Bancroft-Whitney Company in 1895 for the publication of the supreme court reports by this Company upon behalf of the state. This contract was to extend over a ten-year period, and was to be subject to that provision of the law which required that the reports be printed within the state. The Bancroft-Whitney Company then entered into a sub-contract with a local printer in Seattle to do the printing for them, which procedure obtained for the duration of its contract with the state. When the contract expired in 1905, public bids were sought and again the contract went to the Bancroft-Whitney Company. At this time, a sub-contract was entered into by the successful bidder with the public printer whereby the latter was to do the printing for the Bancroft-Whitney Company. This has been the practice from that date, during which time the Bancroft-Whitney Company has been the successful bidder for the contract of publishing the supreme court reports extending through several ten-year contracts.

When the contract was awarded in 1905, Frank Pierce fully believed that he would be the successful bidder. His price, however, was too high, and he failed to secure the contract. So, he decided to publish the supreme court reports independently of the state, as the Bancroft-Whitney Company had done between the years 1891-1895. Beginning with volume 32, his unofficial series of the *Washington Reports* extends through volume 56, that is, from 1903 through 1910. These volumes, like all of the other Pierce publications, bear the imprint "Tribune Printing Company." Since the paginations correspond with

²⁹Laws of Washington 1889-90, Ch. 37, page 327; Laws of Washington 1891, page 74.

those of the official editions, they are not easily distinguishable from the official edition of the reports, unless one is familiar with variations in typography, weight of paper, etc.

Many attorneys will recall the disastrous earthquake and fire which destroyed the city of San Francisco in 1906. The loss of its printing plant, book stock, and plates in this fire placed a severe burden upon the Bancroft-Whitney Company to supply complete sets and back volumes of the supreme court reports. To overcome this difficulty a reprint of the reports published to that date became a necessity. Such a reprint included volumes 1-3 *Washington Territory Reports*, and volumes 1-38 *Washington Reports* inclusive, and their reprint status is indicated by this statement on the title pages.

A tabulated arrangement of these volumes of the *Washington Reports*, therefore, shows the following:

- Volumes 1-9 Wash. (state edition) original and official.
- 1-9 Wash. (B.-W. edition) original.
- 1-9 Wash. (B.-W. edition) 1906 reprint.
- 10-32 (B.-W. edition) original and official.
- 10-32 (B.-W. edition) 1906 reprint.
- 33-38 (B.-W. edition) original and official.
- 33-38 (B.-W. edition) 1906 reprint.
- 32-38 (Pierce edition) original.
- 39-56 (B.-W. edition) original and official.
- 39-56 (Pierce edition) original.
- 57-date (B.-W. edition) original and official.

XIII. Washington Decisions (Advance Opinions).

The plan to publish the opinions of the supreme courts of the Pacific states in advance of the bound volumes, probably had its inception in the *Pacific Coast Law Journal* (1878-1883) 12 volumes, which was issued in weekly form by the W. T. Baggett Company, of San Francisco, under the editorship of the W. T. Baggett, himself. The scope of this review included decisions as handed down by the United States courts and the state and territorial supreme courts; and while numerous western decisions were printed therein, none from Washington seems to have been included.

In 1884 the *Pacific Coast Law Journal* ceased publication and was succeeded by the *West Coast Reporter*, which was started primarily to make available the advance publication of important decisions of the western states and territories with the exception of Kansas and the Indian Territory. It is understandable why the latter was omitted from this service, but it is not now known why the decisions from the Kansas courts were excluded.

This periodical reporter was published weekly during the years 1884-86 by the A. L. Bancroft Company of San Francisco under the editorship of Doctor John N. Pomeroy. It ceased publication in the

latter year under an agreement with the West Publishing Company, in order to provide a clear field for the *Pacific Reporter*, which had been started in December 1883, and which thereby briefly antedated it. Since the *Pacific Reporter* included every decision from all western states and territories, the decision of the Washington Supreme Court at once became available in pamphlet form as a part of this service. In this form, and for the first time, all decisions of the Washington court were to be had in advance of their publication in the bound reports. Furthermore, as is well known, the bound volumes of the territorial reports had been issued very infrequently and covered several years in each volume. Even in the years following statehood, when the bound volumes of the state reports were issued at more frequent intervals, the advance sheets of the *Pacific Reporter* remained the sole medium of obtaining these advance opinions, until they became collaterally obtainable through Frank Pierce's publication, which is described below.

The first Washington decisions to be included in the *West Coast Reporter* were handed down in 1880, while those which appeared in the *Pacific Reporter* were rendered in 1883, although volume one of each set was published early in the year 1884. The decisions made available through the advance sheets of the *Pacific Reporter* were much more satisfactory, so the *West Coast Reporter* withdrew from the field of competitive publications.

Credit for the planning and development of the present form of advance decisions as now published by the Bancroft-Whitney Company, belongs to Frank Pierce of the Seattle bar, who, in 1903, began the publication of a pamphlet edition of these decisions of the supreme court. Up to that time, according to Mr. Pierce, attorneys were required to purchase typewritten copies of decisions from the clerk of the court in order to get them in time for petitions for rehearing, and it is not unlikely that the release of these decisions was often purposely delayed so as to encourage the sale of such copies. This practice was a source of considerable profit to these clerks, and it is not surprising that they opposed the request of Mr. Pierce to purchase copies of the decisions as the same were filed, although the West Publishing Company seemingly was experiencing no difficulty in procuring such copies for inclusion in the advance sheets of the *Pacific Reporter*. Mr. Pierce states it was not until he had threatened to put a typewriter and a typist in the clerk's office for the purpose of copying these decisions, that they finally consented to furnish him with the copies desired.

The Pierce edition of the advance decisions was entitled *Washington Reports* and was to be cited as "1 Wash. Rep. 1," etc., notwithstanding a probable confusion in form of citation between the advance decisions and the bound volumes of the reports. The first volume of his

series of advance decisions corresponded with volume 33 *Washington Reports* (Volume 32 *Washington Reports* had been issued previously and did not have advance opinions preceding it).

In 1905, the Bancroft-Whitney Company also began the publication of a series of these advance decisions, paralleling those then being published by Frank Pierce, to which they gave the name *Washington Decisions*. Volume 1 of their series corresponds with volume 39 of the *Washington Reports*, although it should be remembered, the paginations do not coincide. Obviously, no need existed for two such publications, and with the contract to publish the bound volumes of the supreme court reports in their hands, they had, as Mr. Pierce states, an advantage which he could not match. Besides a superior form of arrangement and a more pleasing and neat style of printing, which has continuously been a distinguishing characteristic between the Pierce and the Bancroft-Whitney publications, soon won for the Bancroft-Whitney series a pronounced preference. Therefore, Pierce sold his subscription list to them, and the publication of these decisions has since been continued solely by this Company.

When the publication of the *Washington Decisions* in the Bancroft-Whitney series reached volume 58, which was the equivalent of volume 100 of the *Washington Reports*, the comparative relationship between these two series was made more determinable. At this point the numbering of the *Washington Decisions* was begun over again in a "new series." Thus, Volume 1 (new series) is equivalent to Volume 101 of the *Washington Reports*; and, from this point on, the relation was still determined by adding 100 to the "new series" volume number of the *Washington Decision* in order to ascertain the corresponding *Washington Reports* volume number.

In 1939, with the publication of volume 200 of the *Washington Reports*, the title of the bound volume series was changed to the "2d Series," but the relation between the *Washington Decisions* and *Washington Reports* remained the same. Thus, Volume 112 of the *Washington Decisions* became equivalent to Volume 12 of the *Washington Reports, 2d Series*. Aside from the reasons commonly offered for this change, the more probable one was that of expediency and a desire to procure such an increase in the subscription list as a series beginning with volume 1 would psychologically invite. The paginations of the *Washington Decisions* and the *Washington Reports* have never been the same, and efforts to persuade the publisher to make them so have been thus far unavailing. However, there is some reason to believe that this unnecessary inconsistency may yet be corrected.

XIV. Textbooks and Treatises on Washington Law.

While many books and periodicals have been written by Washington lawyers, only a few have been particularly restricted to Washington law. Of these, several contain but a few pages, while others

are of a comprehensive nature. It is interesting to observe that these treatises and monographs are not entirely the results of recent research, for in 1892 Twyman O. Abbott, of the Tacoma bar, published his *Real Property Statutes of Washington Territory*, and three years later Judge Richard A. Ballinger published his *Community Property*. The year 1904 brought out two important treatises on Washington law, and in 1910 another, and in 1913 two more. From that date, members of the Washington bar have contributed generously to the presentation of books devoted to subjects of Washington law. Among the titles worthy of particular mention are the following:

Automobile Law:

Cooley, Homer D., *Compendium of Automobile Law in Washington*, 251 pages. Everett, 1930. Supplement (n.d.), 19 pages.

Gruber, Edwin, *Decisions on Admission of Evidence in Automobile Cases in the State of Washington*, 59 pages. Bellingham, (n.d.).

Bills of Exceptions:

Smiley, William H., *Treatise on Bills of Exceptions and Statements of Fact*, 308 pages. San Francisco, 1913.

Community Property:

Ballinger, Richard A., *Treatise on the Property Rights of Husband and Wife Under the Community or Ganancial System*, 543 pages. San Francisco, 1895.

McKay, George, *Treatise on the Law of Community Property*, 2nd Ed., 1181 pages. Indianapolis, 1925. Supplement, 16 pages, 1926.

Conditional Sales:

Hazel, Harry, Sr., and Hazel, Harry, Jr., *Law of Conditional Sales Contracts in the State of Washington*, 414 pages. Seattle, 1939.

Conflicts of Law:

See Restatement of the Law.

Contracts:

See Restatement of the Law.

Corporations:

Douglas, John F., *Law of Private Corporations (Washington)*, 244 pages. Seattle, 1904.

McIntire, Stephen A., *Washington Corporations*, 636 pages. Portland, 1913.

Evidence:

See Automobile Law.

Legal Forms:

O'Bryan, J. Grattan, *Washington Form Book*. 2 vols. Stanford University Press, 1932. Kept up to date with supplements interfiled following each session of the Washington legislature.

Negligence:

Adams, Edgar J., *Briefs on the Law of Negligence of Washington*, 640 pages. Olympia, 1910.

Probate Law and Practice:

Abbott, Twyman O., Probate Law and Practice, 3 vols. San Francisco, 1904.

Real Property:

Abbott, Twyman O., Real Property Statutes of Washington Territory 1843-1889, 1231 pages. Olympia, 1892.

Winfree, William H., Notes on Real Property Law of Washington, 146 pages. Seattle, 1934.

Restatement of the Law:

Sholley, John B., Conflict of Law. Washington Annotations to the Restatement of the Law of Conflicts. 196 pages. St. Paul, 1940.

Shepherd, Harold, Shattuck, Warren L., and Mawer, Muriel, Contracts. Washington Annotations to the Restatement of the Law of Contracts. 332 pages. St. Paul, 1935.

Hackman, Franklin C., Property. Washington Annotations to the Restatement of the Law of Property, 63 pages. St. Paul, 1940.

Workmen's Compensation:

Wight, Mark H. and Klingberg, Judson, Workmen's Compensation Law for the State of Washington. 600 pages. Portland, 1943.

XV. Washington Digests and Notes on Reports.

Digests of Washington Supreme Court Reports have been numerous for a state yet so young; but other than the Remington digests, few, if any, have served any outstanding part. Most of these digests probably are now forgotten, which provides herein the reason for recalling them to mind.

First among these early digests was one which was published even during the territorial period. It was the work of the late Judge Charles H. Carey, of the Oregon Supreme Court, and was published in 1888. The title of this digest is *Index Digest of the Oregon and Washington Reports*, 656 pages. Intended primarily as an Oregon digest, since it covered volumes 1-11 of the reports of that state, it, nevertheless, included a digest of volumes 1-2 *Washington Territory Reports*. In character and form, it is as its name states it to be: an index-digest. Hence its digest character is very brief and abridged, although based on an acceptable subject classification plan.

Next in point of time was the little digest compiled by the late John E. Horan, of the Everett bar. Like the preceding reference, it also is an *Index Digest of Washington Reports*, 162 pages. It embraces all the decisions of volumes 1-3 of the *Washington Territory Reports* in addition to volumes 1-9 of the *Washington Reports* and bears the imprint date of 1895. As the author points out,

"The design does not contemplate a full digest of each decision, but rather a statement of the rule of law enumerated, accompanied by as brief a statement of the facts as a proper understanding of the rule requires."

The author further relates that the work was originally undertaken as an aid only to his own practice. He had no intention then of offering it for publication, but as the number of the reports increased and the need for a digest thereof grew, he decided to offer it to the profession in the hope that "it would be of some value in lessening the labors of the practicing lawyer."

In the same year, William S. Church, of the San Francisco bar, compiled his *Northwest Digest*, covering the Montana, Oregon, and Washington reports, 1165 pages. It increased the digest coverage of the *Washington Reports* to include volume 13, to which in 1895, he added a supplement (Vol. 2) 671 pages, extending the digest coverage to include volume 19 of the *Washington Reports*.

Worthy of mention in this connection is the dedication employed by the compiler in his first volume. It is to that grand old man and venerable jurist, who—thanks to God—is still with us, and which reads as follows:

"To James T. Ronald, ex-mayor of Seattle, a good lawyer, who grew up with the tall trees of the legal fraternity in the new civilization of the Northwest, and who is favorably known at home and honored abroad."

Since the *Northwest Digest* was a product of the Bancroft-Whitney press, it is not surprising to find that its plan of arrangement and classification was made to follow that of Rapalje's *Digest of American Decisions*—a feature of no small merit—likewise published by this company.

In 1900, three members of the Tacoma bar—Leander C. Dennis, Morris Menkus, and Arthur U. Dennis—published their *Digest of Washington State Reports*, 557 pages. While this digest was published locally, and thereby lacks the benefit of the experience of recognized law publishers both as to form and arrangement, it nevertheless possesses a very modern appearance. The scope of its contents covers the first 19 volumes of the state reports in addition to the territorial reports.

Similar to the above digest in form and appearance is the one published by Judge Abraham L. Miller, of the Clark County Superior Court. Judge Miller's digest, bearing on its label the title, *Miller's Washington Digest*, 999 pages, was published in 1903 by the Keefe-Davidson Company of St. Paul, Minnesota. This publishing company was an off-shoot of the West Publishing Company of the same city, which fact is not without value in evaluating the quality of the digest. As the period covered by the history of the state is greater, so also is the number of the reports digested, which in this digest are volumes 1-3 of the territorial reports and volumes 1-34 of the state reports. According to its preface,

"This work has been prepared for the purpose of affording

a quick and ready reference to the decisions of the Supreme Court of Washington.

"It is not intended to state what the law is, but where to find the decisions on any given subject covered in the Reports.

"Instead of using cross-references to any considerable extent, the plan has been adopted of making a short and concise statement of the principle of law involved and repeating it under as many heads as it might directly or indirectly apply to . . ."

Late in the same year (1903), the newly appointed reporter for the supreme court, Arthur Remington, issued through the medium of the State Journal Printing Company of Madison, Wisconsin⁸⁰ a volume of *Notes on Washington Reports*, 572 pages. This volume is more of the nature of a citator than a digest. In fact, a description of its contents taken from its title page, states that it covers volumes 1-3 territorial reports and volumes 1-30 of the state reports, "showing the citation of Washington Reports fully digested, from all citing cases in the same court, in the U. S. Courts and in all state courts of last resort." To this citation of Washington decisions, the compiler added a table of cases with cross-references and an index-digest of the notes contained in the volume.

Although this was the first of a long list of important contributions by Mr. Remington for the use of the Washington bar, it was none the less an important one. Many occasions are presented for reference to it now, notwithstanding its publication forty years ago. In later years, many of its features were embodied into his *Washington Digest*, and thereby continued to fulfill their purpose.

Mr. Remington was very sanguine in his evaluation of books of citation in note form, but time has not entirely confirmed his expression of optimism. Writing in the preface of his *Notes*, he said:

"Next to a digest, citation information is the most important aid to the intelligent use of reports. The growing appreciation of this fact has led to the publication of many numerical tables of citations. These, however, throw the whole burden for investigation upon the practitioner. The ever-increasing volume of such tables has made their use laborious in the extreme, and even of questionable value . . . the demand, nowadays, is for fuller information.

"Notes, or digested citations, in book form, are now rapidly displacing the numerical tables. . . ."

It is, of course, true that these "notes, or digested citations in book form" are useful and important aids in the tracing of the law; and for some years following the publication of this volume of *Notes*, a number of series of "Notes on State Reports" were published. These are now seldom used, and, in fact, are infrequently published. Their place has been taken by the numerical tables of citations, which have

⁸⁰ Mr. Remington had formerly lived in Madison, Wisconsin.

grown and developed until they have become one of the essential classes of reference books of legal aid and direction.

Many years of experience in the digesting of Washington decisions, for inclusion in the annotations to his codes, has trained Frank Pierce to be an expert digester; yet he has never prepared a digest of Washington reports. It must not be inferred, however, that he has not contemplated such action, because on two separate occasions he has given thought to this very task.

As far back as 1908, he sought expression of the opinion of the bar on such a plan, and in his series of weekly advance decisions of the supreme court the following advertisement was for some time inserted:

"PIERCE'S DIGEST OF WASHINGTON REPORTS"

"For four years Mr. Pierce has had in preparation a digest, rewriting in terse form all the points in the opinions arranging them to the Century classification.

"In one volume. Price \$10.00 delivered. Will be ready for delivery about April 1, 1908.

"NOT A PADDED, PASTE POT AND SCISSORS
DIGEST."

Mr. Pierce has informed the writer that his advertisement was but a feeler; no one responded and no digest was published. Although he stated that he had had a digest in preparation, actually he had not done any work on it. That he could have done a good piece of work, would be conceded by all.

Shortly before the publication of the *Washington Digest* (West) 12 Vols. in 1934, many former users of the Remington digest urged Mr. Pierce to publish a supplementary volume to their digest to cover the *Washington Reports* from volume 135 to the current date. For a while Mr. Pierce thought of doing so, but later changed his mind. These two contemplated plans were as far as he ever went in the preparation of a Washington digest.

The first edition of the *Washington Digest* compiled by Arthur Remington was published in 1907. It consisted of three volumes and embraced volumes 1-43 of the state reports in addition to the three territorial reports. To this edition, he subsequently published two supplements, as follows:

Supplement 1912 Vol. 4. Vols. 44-62 Washington Reports.

Supplement 1915 Vol. 5. Vols. 63-80 Washington Reports.

Four years after the publication of the second supplement (Vol. 5), he issued the second edition of his digest, to which in time several supplements were likewise added. The bibliographical data pertaining to this edition, are as follows:

Washington Digest 2nd Edition, 1919. 4 vols. vols. 1-103
Washington Reports.

Supplement 1921 vol. 5, vols. 104-135 Washington Reports.

Supplement 1923 vols. 104-121 Washington Reports.

Supplement 1926 vol. 5, vols. 104-135 Washington Reports.

During the years which followed the publication of the second edition of his digest, Mr. Remington undertook the publication of a "*Desk Book*," which he hoped in time to recompile into a supplement to his digest. Although this proposed supplementary volume was about ready for publication at the time of his death, it was never finished or published. The Bancroft-Whitney Company, (who had published his other digests), had in the meantime entered into a sales agreement with the West Publishing Company to market the contemplated *Washington Digest*, 13 vols. which the latter company was then compiling. Contrary to rumors circulated at the time, to the effect that the Bancroft-Whitney Company had agreed to publish this supplement to the Remington Digest, the company has always maintained that there was no such agreement.

As a part of this agreement with the West Publishing Company, the Bancroft-Whitney Company, who owned the copyrights to the Remington digests, offered the new digest at a special price as an inducement and in order to persuade the owners of the second edition of the *Remington Digest* to purchase this new digest. This special allowance, however, required the deletion of the first few pages of each volume of the *Remington Digest*. Thus the value of this latter digest was destroyed, which in turn would have rendered futile any plan of Mr. Remington to bring it up to date by the publication of a supplement thereto.

The *Desk Book*, referred to above, incorporated many helpful features, among which were the Descriptive Word Index, Supplemental Digest of Decisions, Table of Cases Cited, Table of Cases Reported, Table of Statutes, Constitution, Ordinances and Charters Cited. It also connected with the 1926 Supplement (vol. 5) of the Digest.

Annual supplementary volumes to the *Desk Book* were issued, each being cumulative of the others, as follows:

1928 annual covered vols. 136-146 Washington Reports.

1929 annual covered vols. 136-152 Washington Reports.

1930 annual covered vols. 136-158 Washington Reports.

1931 annual covered vols. 136-165 Washington Reports.

1931 pocket supplement vols. 166-170 Washington Reports.

The volume for 1931, as indicated above, contained the pocket supplement feature and was marked "Volume 1" indicating a plan to make it a unit supplementary to the 1919 edition of his digest when the time came for publishing a volume 6 or a cumulative supplement to this work.

The Bender-Moss Publishing Company, also of San Francisco, seeking to obtain some of the profits arising out of the publication of digests, employed William S. Church, the former compiler of the *North-west Digest*, to edit the *Bender-Moss Digest*. It also was intended that this digest should connect with 1915 supplement (vol. 5) of the

first edition of Remington digest, but it was not a financial success, and after the publication of annual volumes for the years 1915-1916, and 1916-1917, and covering volumes 81-93 of the *Washington Reports*, the project was discontinued.

One remaining digest deserves brief mention. It is *France's Supplemental Digest* (for Washington), covering the years 1911-1930 and volumes 63-152 of the *Washington Reports*. The publication of this digest was started by William Baxter France, of the Seattle bar. It also was a quarterly publication, which was later cumulated into annual volumes. During the years from 1922-1930, the editorship of the digest was in the hands of Mary G. Hoard, also of the Seattle bar. At the expiration of this time, the digest was discontinued.

XVI. Bar Association Reports

The Washington State Bar Association was organized in 1888, but no proceedings were published until 1894. This first volume of its proceedings is, therefore, the sixth report, but in it will be found a summary of the proceedings of the first five years of the history of the Association. The proceedings for the years 1895 and 1896, being the seventh and eighth reports respectively, are exceedingly scarce volumes, and many sets of *Washington Bar Association Reports* lack these volumes.

In 1919, a new legal periodical was started by the University of Washington Law School, and the first and only issue of this *Washington Law Review* (April, 1919) is devoted to the proceedings of the joint meetings of the Washington State Bar Association and the Oregon State Bar Association for the year 1917. No separate proceedings of these Associations were printed for that year.

Regular sessions of the Washington State Bar Association have been held since the year of its organization, and its published reports constitute a series dating from 1894 to 1927. The report for the year 1927 is the last volume of published proceedings, although, subsequent to that date, partial reports have appeared in the *Washington Law Review* and the *State Bar Review*. The proceedings of the Association for the years subsequent to 1927, except for the years 1928, 1929, 1939 and 1940, have been preserved in typewritten form in the files of the Association and in the University of Washington Law Library. Unfortunately, these typewritten proceedings are not covered by the recently completed *Index to the State Bar Associations Reports and Proceedings* of the various states and recently published (1942) by Baker, Voorhis and Company under the auspices of the American Association of Law Libraries. They are, however, fully indexed in a local index of the proceedings of the Washington State Bar Association, which is kept on file in the University of Washington Law Library.

One *Annual Report* (42 pages) was published by the Washington State Bar Association. It covers the year June 1933-July 1934, and represents the report of the activities of the Association for the first year under the Integrated Bar Act.

Mention should be made also of the *Seattle Bar Association Reports*, but not so much for their content as for scarcity. Being for the most part of diminutive size, it is probable that they were cast aside and have become lost. So far as is known but one complete set of these reports exists in the state, that being in the University of Washington Law Library. Beginning with its first annual report in 1906, the series is continuous through the year 1912. The form and size of the series then changes, and the following subsequent reports were published: 1913, 1914, 1915, 1919, 1925, 1930. Publication of the series is now suspended.

XVII. *Legal Periodicals.*

Probably all Washington lawyers are familiar with the *Washington Law Review*. Certainly they should be, because it is now supplied to them as part of their state bar association dues. For like reason, they should have been familiar with the *State Bar Review* which was similarly furnished to them a few years ago. Accordingly, only casual mention need be made here of these publications. Other legal periodicals possessing a local color may well be referred to with more detail.

The current series of the *Washington Law Review* was begun by the late Dean John T. Condon of the University of Washington Law School. This was in 1925, and since then the review has been published quarterly at regular intervals. Reference to the above review as the "current series" is justified by the explanation that this is the second legal periodical published by the University of Washington Law School under this name. Although comprising but one issue (April, 1919), the original publication (discussed above) is a separate review and bears no relation to the present publication of the same name.

When the (Washington) *State Bar Review* ceased independent publication in 1936, and was merged with the *Washington Law Review*, the title of the current review was changed to *Washington Law Review and State Bar Journal*. The publication of this bar review was begun in October 1934, and was released quarterly in like manner with the *Washington Law Review* until its publication terminated with the July issue 1936 (vol. 2, no. 4).

The policy of the *State Bar Review* according to its sponsors was to "attempt to report briefly on the current and intended activities of the Association and its principal committees; to report upon the doings of the board of the Association; to make such reference as may from time to time be deemed pertinent and of value to the profes-

sion. . . ." Following its merger with the *Washington Law Review*, a special section of the latter review has been reserved to the bar association for the carrying out of this policy.

A little review of scant value, but of great scarcity is the *Washington State Bar Bulletin*. Two numbers of this bulletin (vol. 1, No. 1-2) were issued on November 15, 1921 and June 1, 1922, respectively. These numbers were inserted in the 1921 and 1922 reports of the state bar association, and for this reason probably have largely been lost.

In January, 1933, a local court reporter, M. H. Shindell of Seattle, began the gratis publication of a legal periodical entitled *The Court Reporter*. Volume 1 comprises six numbers with supplements to numbers one and two; while volume 2 comprises three numbers. The publication was discontinued with volume 2, number 3 (June, 1935). It should be pointed out that the first issue of this review is very scarce, and has been photostated by the University of Washington Law Library in order to supply complete sets to libraries.

Three additional legal periodicals deserve special mention because of their scarcity:

Pacific Law Journal.

Seattle Legal News

Northwest Law Journal.

The first periodical in this group, *Pacific Law Journal*, consists of but one number and of which probably the only known copy is now in the University of Washington Law Library. It was published in Seattle in January, 1911. Those who were interested in its publication were Carl Gutheil, Carl Gross, and a lawyer named Thomas F. Hunt. The two first mentioned gentlemen were at that time students in the University of Washington Law School, and, according to Mr. Gutheil, the project was largely a student enterprise in which Mr. Gross was the moving spirit. At this time, no local law school review had made its appearance, and it was thought that this publication would serve this purpose. "It was started on a shoestring," Mr. Gutheil has informed the writer, "and after the publication of the first number, the shoestring broke. Lawyers were skeptical of the value of the periodical and, therefore, did not subscribe."

The *Seattle Legal News* was edited by Austin G. McBride, of the Seattle bar. It was primarily intended as an outlet for the publication of legal notices. However, sharp and cynical editorials were written by the editor, who had become somewhat embittered with life. The review was published weekly beginning with volume 1, number 1 (April 24, 1915), and ceased with volume 5, number 5 (September 27, 1930). Complete sets of this review are likewise very scarce.

In presenting the *Seattle Legal News* to the Seattle bar, the editor expressed the desire to make it a "strictly legal journal with live legal articles by members of the bar," accompanied by a "review of legal decisions on special lines of business." Particularly interesting is

the assertion of its editor, that this journal would always "speak the truth and advocate what is right." It was his hope that their readers would be willing to remark that: "It must be true, for I saw it in the *Seattle Legal News*."

The *Northwest Law Journal*, also published in Seattle, was the undertaking of Edward S. Ingrahm and George Coryell. It was issued bi-weekly beginning on June 10, 1891, and ceased publication probably with number 18 on February 25, 1892, although the exact number of issues released is not now known. The Union Serial List does not show any libraries possessing more than fourteen numbers, therefore, it is believed that the file now in the University of Washington Law Library is the most complete in existence.

In presenting their publication to the bar, the editors proposed primarily to make it a medium for reporting the "decisions of the superior courts in causes involving questions of interest and importance." Mr. Coryell once told the writer that the lawyers were not interested in legal periodicals and would not subscribe to it. It lost money from the start, and, accordingly, its editors gave it up.

An interesting publication which, while called *Washington Bankers' Law Letter*, was in reality a legal periodical. It was published in Olympia from 1926-1929, and is numbered from volume 1 to volume 5 respectively. It was edited by one of the scholars of the Washington bar, Arthur M. Harris of Seattle. Mr. Harris was closely connected with the work of the Supreme Court for a number of years and was well qualified to review its decisions for the banking profession. He referred to the *Law Letter* as a "monthly discussion of current decisions of the State Supreme Court at Olympia and local Federal Courts, upon banking, bond, realty and allied matters." The publication is probably but little known to the bar, but that is no fault of the publication. It could well have supplemented the lawyers' digest services for Washington law. It is feared that no complete file of this serial has survived.

XVIII. Local Rules of the U. S. District Court for the Western District of Washington.

With the adoption and promulgation of the uniform Federal Rules of Civil Procedure and revised Admiralty and Bankruptcy Rules pursuant to the authority conferred upon the United States Supreme Court by Congress (Tit. 28, Sc. 723b and 723c), it became desirable to revise and repromulgate rules for the local district courts. This has been done in most of the federal districts, and the rules promulgated for the Western District of Washington became effective on August 1, 1941. In order to make these rules³¹ available to the bar in a convenient form, they have been printed (70 pages) and distributed gratis by the Frayne Printing Company, of Seattle.³²

³¹ Federal Rules Service Vol. 5, Callaghan and Co., Chicago, 1941.

³² Address, 2518 Western Ave., Seattle.

XIX. Citators to Washington Law.

Omitting the discussion herein of the Shepard's *Washington Citations*, because of their common usage and acquaintance, the reader's attention is directed to the historical interest which, through the efforts of members of the bar and others, prompted several attempts to develop local citators for Washington.

Some mention has been made of Remington's *Desk Book* which included as one of its features a cumulative index of citations of Washington decisions for the years 1926 through 1931. This was an excellent feature of this volume and was quite worthwhile. Further discussion of this volume is, therefore, unnecessary.

The first attempt to devise a citator for Washington through the efforts of a member of the local bar was the one started in 1901 by the late Dean John T. Condon. Since the form and style of this citator followed that of the Shepard's *Washington Citations*, it is not to be supposed it could escape the objections of the Frank Shepard Company, and such was the case. A threatened injunction forced the Dean to suspend the publication of his citator, as he did not wish to be charged with an interference in the copyright privileges of the Frank Shepard Company. The scope of *Condon's Washington Citations*, 8 pages, included citations to decisions reported in volumes 1 to 3 Washington Territory Reports and volume 1 to 22 Washington Reports.

In 1906, another Seattle lawyer, Edward Judd, prepared a citator, which he called *Cross-Citations of the Washington Reports*, 52 pages. It was published for Mr. Judd by the Coast Advertisers' Service, of Seattle, and covered volumes 1 to 3 Washington Territory Reports and volumes 1 to 43 Washington Reports. The form and style of this citator differed greatly from that published by the Frank Shepard Company.

A member of the Tacoma bar, Herman G. Raettig, in 1917, published a volume of *Citations of Forms Found in the Washington State Reports*, 206 pages, which covered volumes 1 to 3 Washington Territory Reports, and volumes 1 to 92 Washington Reports. It embraced 170 classes of forms included under the following broad topical divisions: Civil, Criminal, Probate, Contracts and Miscellaneous Instruments. A revision of the Raettig citator, with 429 pages, was published in 1927, which extended its scope to include volume 140 Washington Reports. The number of classes of forms was increased from 170 to 222, and a new class of forms—instructions to juries—was added under the topical division of civil procedure.

A later attempt to publish a citator for the state of Washington was made in 1930 by Lyle Smith,³³ of Seattle. It was published monthly for three years—each issue being cumulative of the preceding ones.

³³ Nothing is known of Lyle Smith, except that he is not a lawyer.

The title of the citator changed in 1932 (volume 3) to read *Lyle Smith's Current Citator for Washington*, and the place of publication was moved to Portland, Oregon. The several numbers of each volume were unlike the other citators mentioned above in style and form, and consisted of but a few pages each. At the present moment, no complete file of this citator can be located within the state.

XX. Conclusion.

In conclusion, it should be pointed out that no attempt has been made to cover all Washington legal publications, but rather, it has been the purposes of these desiderata to refer to those publications having some special interest or significance. No reason exists for considering all of the publications above mentioned as having an essential use to the lawyer, and such is not the purpose of these desiderata; but if they serve to point out the scope of legal writing in the major bibliographical fields of the law, the efforts of the writer will have accomplished all that has been intended and desired.